

**AMENDMENT TO THE THOMAS AMENDMENT IN
THE NATURE OF A SUBSTITUTE FOR H.R. 4157
OFFERED BY M____.**

Add at the end the following new section:

1 **SEC. 10. ASSURING ESTABLISHMENT AND PROMOTION OF**
2 **INTEROPERABILITY STANDARDS AND CER-**
3 **TIFICATION AND INSPECTION PROCESSES;**
4 **APPLICATION OF STANDARDS UNDER MEDI-**
5 **CARE.**

6 (a) ASSURING ESTABLISHMENT OF INTEROPER-
7 ABILITY STANDARDS AND CERTIFICATION AND INSPEC-
8 TION PROCESSES.—Section 1173(a) of the Social Security
9 Act (42 U.S.C. 1320d-2(a)) is amended by adding at the
10 end the following new paragraph:

11 “(4) ASSURING ESTABLISHMENT OF INTER-
12 OPERABILITY STANDARDS AND CERTIFICATION AND
13 INSPECTION PROCESSES.—

14 “(A) STANDARDS.—If national standards
15 for interoperability of health information tech-
16 nology have not been approved, as provided by
17 the National Coordinator for Health Informa-
18 tion Technology under section 271(c)(3)(B)(i)
19 of the Public Health Service Act, within 18

1 months after the date of the enactment of this
2 paragraph, or if such standards do not incor-
3 porate the standards adopted by the Consoli-
4 dated Health Informatics Initiative, the Sec-
5 retary shall develop and approve such standards
6 (that incorporate the standards adopted by such
7 Initiative) by not later than 24 months after
8 such date of enactment.

9 “(B) CERTIFICATION AND INSPECTION
10 PROCESS.—If a certification and inspection
11 process described in section 271(c)(3)(B)(ii) of
12 the Public Health Service Act has not been pro-
13 vided by the National Coordinator for Health
14 Information Technology within 18 months after
15 the date of the enactment of this paragraph,
16 the Secretary shall provide for such process by
17 not later than 24 months after such date of en-
18 actment”.

19 (b) FEDERAL SPENDING CONDITIONED ON COMPLI-
20 ANCE WITH STANDARDS.—

21 (1) IN GENERAL.—Not later than one year
22 after the adoption by the Federal Government of an
23 applicable standard under section 271(c)(3)(B)(i) of
24 the Public Health Service Act (or section
25 1173(a)(4)(A) of the Social Security Act), and in

1 compliance with chapter 113 of title 40, United
2 States Code, no Federal agency shall expend Federal
3 funds for the purchase of any new health informa-
4 tion technology or health information technology sys-
5 tem for clinical care or for the electronic retrieval,
6 storage, or exchange of health information that is
7 not consistent with such applicable standard.

8 (2) RULE OF CONSTRUCTION.—Nothing in
9 paragraph (1) shall be construed to restrict the pur-
10 chase of minor (as determined by the Secretary)
11 hardware or software components in order to mod-
12 ify, correct a deficiency in, or extend the life of exist-
13 ing hardware or software.

14 (c) USE OF QUALIFIED ELECTRONIC HEALTH
15 RECORD SYSTEM AS CONDITION OF PARTICIPATION IN
16 THE MEDICARE PROGRAM.—

17 (1) PROVISION OF CORE FUNCTIONS IDENTI-
18 FIED BY INSTITUTE OF MEDICINE REPORT.—

19 (A) IN GENERAL.—With respect to items
20 and services furnished on or after October 1,
21 2015, subject to subparagraph (B), a health
22 care provider and a Medicare plan sponsor shall
23 not be qualified to participate under the Medi-
24 care program under title XVIII of the Social
25 Security Act and such a provider or sponsor

1 shall not be eligible for payments under such
2 title unless the provider or sponsor, respectively,
3 demonstrates to the satisfaction of the Sec-
4 retary of Health and Human Services (in a
5 form, manner, and time specified by the Sec-
6 retary) that the provider or sponsor uses an
7 electronic health record system that provides for
8 the following:

- 9 (i) Privacy and security protections.
- 10 (ii) Each of the following core func-
11 tions, as identified in a report issued by
12 the Institute of Medicine in July 2003:
- 13 (I) Patient health information
14 and data.
- 15 (II) Results management.
- 16 (III) Order entry and manage-
17 ment.
- 18 (IV) Decision support.
- 19 (V) Electronic communication
20 and connectivity.
- 21 (VI) Patient support.
- 22 (VII) Administrative processes.
- 23 (VIII) Reporting and population
24 health.

1 (B) AUTHORIZATION FOR PHASE-IN.—
2 Taking into account the recommendations pro-
3 vided by the Institute of Medicine regarding a
4 schedule for the phase-in of the requirement
5 under subparagraph (A) by function and site of
6 care, the Secretary may require compliance with
7 such subparagraph for one or more of the func-
8 tions in one or more sites of care before the
9 date specified in such subparagraph.

10 (2) TRANSITIONAL FINANCIAL INCENTIVES.—In
11 the case of a health care provider or Medicare plan
12 sponsor that is not an EHR provider or sponsor, the
13 Secretary shall provide for a basis of payment for
14 items and services furnished (or plans offered) under
15 title XVIII of the Social Security Act by such pro-
16 vider or sponsor that is—

17 (A) for fiscal year 2011, .25 percent less
18 than the payment basis otherwise applicable
19 without regard to this subsection;

20 (B) for fiscal year 2012, .5 percent less
21 than the payment basis otherwise applicable
22 without regard to this subsection;

23 (C) for fiscal year 2013, .75 percent less
24 than the payment basis otherwise applicable
25 without regard to this subsection;

1 (D) for fiscal year 2014, 1.0 percent less
2 than the payment basis otherwise applicable
3 without regard to this subsection; and

4 (E) for fiscal year 2015, 1.25 percent less
5 than the payment basis otherwise applicable
6 without regard to this subsection.

7 (3) DEFINITIONS.—For purposes of this sub-
8 section:

9 (A) EHR PROVIDER.—The term “EHR
10 provider or sponsor” means a health care pro-
11 vider or Medicare plan sponsor that dem-
12 onstrates to the satisfaction of the Secretary of
13 Health and Human Services (in a form and
14 manner and by a time specified by the Sec-
15 retary) that such provider or sponsor uses an
16 electronic health records system that meets the
17 requirements under paragraph (1)(A).

18 (B) HEALTH CARE PROVIDER.—The term
19 “health care provider” includes a provider of
20 services defined in section 1861(u) of the Social
21 Security Act (42 U.S.C. 1395x(u)) and a sup-
22 plier defined in section 1861(d) of such Act (42
23 U.S.C. 1395x(d)).

24 (C) MEDICARE PLAN SPONSOR.—The term
25 “Medicare plan sponsor” means an organization

1 or sponsor offering a Medicare Advantage plan
2 or a prescription drug plan under part C or D
3 of title XVIII of the Social Security Act.

4 (d) MEDICARE ADD-ON PAYMENT FOR HEALTH IN-
5 FORMATION TECHNOLOGY.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of law, the Secretary of Health and
8 Human Services shall provide for payment under
9 this section (in a form and manner specified by the
10 Secretary) to each health care provider that fur-
11 nishes items or services for which payment may be
12 made (but for the application of a deductible, coin-
13 surance, or other cost-sharing) under part A or part
14 B of title XVIII of the Social Security Act of the
15 amount specified in paragraph (2) for items and
16 services furnished by the provider during the period
17 specified in paragraph (3). Such payments are in ad-
18 dition to payments otherwise made under such parts.
19 This section constitutes budget authority in advance
20 of appropriations Acts and represents the obligation
21 of the Federal Government to provide for the pay-
22 ment of health care providers of the amounts pro-
23 vided under paragraph (2).

24 (2) PAYMENT AMOUNT.—The payment amount
25 under this paragraph with respect to items and serv-

1 ices furnished under part A or B of title XVIII of
2 the Social Security Act shall be such amount, over
3 such period of time, as the Secretary determines ap-
4 propriate based on the Secretary's estimates of the
5 costs of providers to acquire and support health in-
6 formation technology. Such amount may be com-
7 puted as a percent of the payment amount otherwise
8 recognized under such part for the provider and
9 items and services involved (determined without re-
10 regard to the application of any deductibles, coinsur-
11 ance, or other cost-sharing).

12 (3) LIMITATION ON USE OF FUNDS.—Payments
13 provided under this subsection to a health care pro-
14 vider may only be used for the purchase and support
15 of health information technology that meets the
16 standards adopted by the Federal government under
17 section 271(c)(3)(B)(i) of the Public Health Service
18 Act (or section 1173(a)(4)(A) of the Social Security
19 Act) either directly or through the use of interface
20 software or other technology necessary to bring pre-
21 existing systems into compliance with standards.

22 (4) SOURCE OF FUNDS.—Payments under para-
23 graph (1) shall be made in appropriate part, as spec-
24 ified by the Secretary of Health and Human Serv-
25 ices, from the Federal Hospital Insurance Trust

1 Fund, established under section 1814 of the Social
2 Security Act (42 U.S.C. 1395f), and from the Fed-
3 eral Supplementary Medical Insurance Trust Fund,
4 established under section 1841 of such Act (42
5 U.S.C. 1395t).

6 (5) HEALTH CARE PROVIDER DEFINED.—For
7 purposes of this subsection, the term “health care
8 provider” means a hospital, skilled nursing facility,
9 home health agency, or other provider of services or
10 physician, health care practitioner, or other supplier
11 that furnishes items and services described in para-
12 graph (1), but does not include a Medicare Advan-
13 tage organization.

14 (6) APPLICATION TO INTEGRATED HEALTH
15 CARE DELIVERY SYSTEMS.—The Secretary shall pro-
16 vide for the application of the previous provisions of
17 this subsection to a Medicare Advantage sponsor of-
18 fering under part C of title XVIII of the Social Se-
19 curity Act a Medicare Advantage plan that inte-
20 grates the functions of health plan, hospital, physi-
21 cian, laboratory, pharmacy, and other clinicians in
22 the same manner as it applied to health care pro-
23 viders under parts A and B of such title.